

BOARD OF APPEALS  
for  
MONTGOMERY COUNTY

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**Case No. CBA-1206-F**

**PETITION OF CONGRESSIONAL COUNTRY CLUB**

**OPINION OF THE BOARD**

(Hearing held July 18, 2001)

(Effective date of Opinion, August 8, 2001)

Case No. CBA-1206-F is a petition pursuant to Section 59-G-2.24 of the Zoning Ordinance (Chapter 59, Montgomery County Code 1994, as amended) to modify an existing special exception (CBA-1206-E) for a golf course/country club. This modification seeks to relocate a previously approved, but yet to be built, tennis building approximately 40 feet west of an existing tennis building.

**Decision of the Board:** Special exception GRANTED, subject to conditions enumerated below.

The Board of Appeals held a public hearing Wednesday, July 18, 2001, pursuant to Section 59-A-4.11(a) of the Zoning Ordinance. Appearing on behalf of the Petitioner were Jody S. Kline, Attorney for Congressional Country Club; Vernon Stricklin, Project Coordinator, Congressional Country Club; Robert Smith, Architect, Smith-Colen Architects; and Brian Donnelly, Landscape Architect/Civil Engineer, Macris, Hendricks & Glascock.

There was no opposition to the requested modification.

**EVIDENCE PRESENTED TO THE BOARD:**

1. The subject property, consisting of approximately 358 acres. The site is located on the west side of River Road between Fenway Drive and Bradley Boulevard, Bethesda, Maryland. The site has frontage on River Road, Bradley Boulevard, and Persimmon Tree Road. The main entrance to the site is on River Road, approximately 1,500 feet south of its intersection with Bradley Boulevard. The site consists of a rolling terrain, many mature trees, and extensive landscaping along its perimeter.

2. The subject property is zoned RE-2 between River Road and Persimmon Tree Road, and R-200 on the south side of Persimmon Tree Road.

3. The properties north and east of the subject site are zoned RE-2 and are developed with low-density, residential uses or private educational institutional uses. The properties to the west of the site, and across Persimmon Tree Road, are zoned RE-2C and RE-2C/TDR and are developed with low-density, residential uses. South of the site, the properties are zoned either RE-2 or R-200 and are developed with low-density, residential uses.

4. On September 12, 2000, the Board of Appeals approved special exception (CBA-1206-E) to modify the existing special exception use to construct a second indoor tennis building, adjacent to the existing enclosed tennis structure located parallel to River Road. The subject modification seeks to relocate the previously approved (but yet to be built) tennis building approximately 40 feet west of the existing tennis structure. This modification will also increase the separation between the two tennis buildings.

5. Mr. Vernon Stricklin, Congressional Country Club, and Mr. Robert Smith, Architect, testified at the public hearing that the applicant is seeking the increased separation between the two tennis buildings because of the substantial cost to retrofit the existing tennis building to meet fire code ratings, due to its proximity to the proposed tennis building between the two enclosed tennis buildings which the Club is now considering in light of this separation requirement. Mr. Smith testified that the increase in separation of the buildings would be sufficient so as not to require the applicant to make any fire rating improvements to the existing building. The separation will also eliminate the expanded viewing lounge between the two buildings, but might ultimately be replaced with a complete new tennis support facility which would be the subject of a separate application. Moreover, Mr. Stricklin testified that the proposed project was going to be over-budget because of the increased costs of construction since its original estimates.

6. Mr. Smith testified that the proposed tennis building would be constructed of the same building materials as the existing tennis structure, with the same palette of colors (Exhibit No. 15). In addition, Mr. Smith testified that the "front addition" (the proposed building) will be in a slightly different plane than the existing building so that both buildings will not be viewed as a single, elongated structure. Mr. Smith testified as to the applicant's landscaping package as well as the proposal to utilize tree screening for the entire length of the building along River Road (Exhibit Nos. 6(b) & 15). Mr. Smith also explained to the Board that the proposed lighting, at each exit of the building, would be located eight feet above the ground and would radiate approximately 10 to 12 feet, stopping well short of the property line (Exhibit 16). Finally, Mr. Smith testified that the proposed modification would be compatible, and in harmony with, the surrounding neighborhood.

7. The proposed application is in conformance with the Potomac Master Plan (1980), which placed the subject property in the RE-2 and R-200 Zones. The Plan is silent regarding the subject site; however, the land use map for the Plan shows single-family density land use for the site. A golf course is allowed by special exception in both the RE-2 and R-200 Zones. Maryland-National Capital Park and Planning (M-NCPPC) Technical Staff found that the requested modification would pose no adverse impacts in association with the Master Plan or the applicant's continued use of the subject property.

8. M-NCPPC Technical Staff found that there were no transportation issues associated with the subject application. Mr. Stricklin testified that the proposed modification would cause no increase in the level of staff at the Country Club, nor would the modification increase the level of vehicular traffic.

9. Mr. Stricklin testified that the proposed modification would not be detrimental to the surrounding neighborhood, nor would it adversely affect the health, safety, or welfare of anyone on, or around the subject property, or in the surrounding neighborhood.

10. The Staff Report indicated that the applicant is exempt from the County's Forest Conservation Law because the proposed modification will not result in the cumulative clearing of more than 5,000 additional square feet of forest.

11. Mr. Brian Donnelly, Landscape Architect/Civil Engineer, explained the applicant's proposal for stormwater management, testifying that the applicant would utilize an underground pipe system and a sand filter for its on-site system (Exhibit Nos. 5 & 16). Mr. Donnelly testified that the applicant would implement a tree save and tree removal plan (Exhibit No. 16), in conformance with Condition Number 3 of this Opinion (see below). Finally, Mr. Donnelly testified that the property is served by adequate sewer and water and that the proposed modification would not adversely impact the surrounding neighborhood.

12. As noted in Number 10 above, the Staff recommended that the applicant submit and obtain approval from M-NCPPC Technical Staff of a tree save plan prior to the release of sediment and erosion control permits or building permits, as appropriate. The tree save plan must show the footprint of the proposed tennis building in relation to the critical root zone (CRZ) of surrounding trees. A tree save plan must be implemented if any portion of a CRZ will be affected before, during, or after construction. A tree save plan must also be implemented for trees along the route to the site, due to the impact of heavy equipment.

13. Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) found that the proposed modification satisfies the general and specific

requirements of the Zoning Ordinance (Exhibit No. 13) and recommended approval of the request for modification to special exception, subject to the following conditions:

1. The applicant is bound by all submitted statements and plans.
2. Approval of a final landscape and lighting plan by technical staff prior to issuance of building permits.
3. Approval of a tree save plan by technical staff prior to release of sediment and erosion control permits or building permits, as appropriate.
4. All terms and conditions of the approved special exception remain in full force and effect.

### **FINDINGS OF THE BOARD:**

Based on the applicant's binding testimony, the evidence of record and the exhibits presented at the public hearing, the Board concludes that the requested modification can be granted. In reaching this conclusion, the Board reviewed the following sections of the Zoning Ordinance and determined compliance with each section as stated below:

#### **Section 59-G-1.2 Conditions for granting.**

59-G-1.21 Standard for evaluation. A special exception must not be granted absent the findings required by the Article. In making these findings, the Board of Appeals . . . must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.

*In accordance with Section 59-G-1.21, the Board finds that the inherent physical and operational characteristics of the proposed use are the noise, traffic, landscaping, size, and bulk of the facility. Because the requested modification focuses on a relocation of a previously approved building, there is not expected to be a significant increase in traffic or noise associated with the site. The Board finds that the size and bulk of the proposed structure are in keeping with the character of the existing use and the site's topography and landscaping will screen the views of this modification from River Road and the surrounding residential areas. The proposed building will be*

*constructed of the same building materials and will be the same color as the existing tennis structure. Moreover, the applicant proposes to use low wattage lights near the entrance to the facility, the only lighting proposed under the modification. The Board finds that there are no non-inherent effects related to this modification that would warrant denial of the application.*

**Section 59-G-1.21 General Conditions.**

(a) A special exception may be granted when the Board finds from a preponderance of the evidence of record that the proposed use:

(1) Is a permissible special exception in the zone .

*The Board finds that the proposed tennis building addition is a permissible modification in the RE-2 and R-200 Zones, in accordance with Section 59-G-1.21(a)(1) of the Zoning Ordinance.*

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

*The Board finds that the proposed modification satisfies the standards and requirements for a golf course and country club under Section 59-G-2.24, in accordance with Section 59-G 1.21(a)(2) of the Zoning Ordinance.*

(3) Will be consistent with the general plan for the physical development of the District, including any master plan thereof adopted by the Commission. Any decision to grant or deny special exception must be consistent with a recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that the granting of a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

*The Board finds that the subject property is covered by the 1980 Potomac Subregion Master Plan. The Master Plan supports the existing RE-2 and R-200 Zones for the property and the subject modification is permitted by special exception in both zones, in accordance with Section 59-G-1.21(a)(3) of the Zoning Ordinance.*

(4) Will be in harmony with the general character of the neighborhood considering population density, design, scale, and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses.

*The Board finds that the proposed modification will be in harmony with the general character of the neighborhood considering population density, design, scale, and bulk of the proposed new structure, intensity and character of activity, traffic and parking conditions, and number of similar uses, in accordance with Section 59-G-1.21(a)(4) of the Zoning Ordinance.*

(5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site irrespective of any adverse effects the use might have if established elsewhere in the zone.

*The Board finds that the proposed modification will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood, in accordance with Section 59-G-1.21(a)(5) of the Zoning Ordinance.*

(6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

*The Board finds that the proposed modification will cause no objectionable noise, vibrations, fumes, odors, dust, glare or physical activity in accordance with Section 59-G-1.21(a)(6) of the Zoning Ordinance.*

(7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

*The Board finds that the proposed modification will not, when evaluated in conjunction with existing and approved special exceptions in the neighboring one-family residential area, increase the number, intensity or scope of special exception uses sufficiently to affect the area adversely or alter its predominantly residential nature, in accordance with Section 59-G 1.21(a)(7) of the Zoning Ordinance.*

(8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective on any adverse effects the use might have if established elsewhere in the zone.

*The Board finds that the proposed modification will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area, in accordance with Section 59-G-1.21(a)(8) of the Zoning Ordinance.*

(9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

*The Board finds that the proposed modification will continue to be served by adequate public services and facilities, in accordance with Section 59-G-1.21(a)(9) of the Zoning Ordinance.*

(i) If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception.

*The Board finds that the requested modification will not require approval of a preliminary plan of subdivision, in accordance with Section 59-G-1.21(a)(9)(i) of the Zoning Ordinance.*

(ii) With regard to findings related to public roads, the Board . . . must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.

*The Board finds that there is no increase in vehicular traffic or internal traffic patterns associated with this requested modification and thus no detrimental effect to pedestrian and vehicular safety will result, in accordance with Section 59-G-1.21(a)(9)(ii).*

### **Section 59-G-2.24 Golf Courses and Country Clubs**

The Board may authorize a golf course, country club, private club or service organization including community buildings, upon a finding that the proposed use will not adversely affect surrounding residential and agricultural uses because of noise, traffic, number of people or type of physical activity; provided, that the following standards and requirements can be met:

(a) The provision of food, refreshments, and entertainment for club or organization members and their guests may be allowed in connection with such use, provided the availability of such services is not reasonably expected to draw an excessive amount of traffic through local residential lots.

*In accordance with Section 59-G-2.24(a), the Board finds that the proposed modification relocates the tennis building further west of the existing tennis building. The Board finds that this increased distance between the two buildings is not expected to draw excessive amounts of traffic through local residential streets.*

(b) All buildings shall conform to the height, coverage, and setback regulations of the zone in which they are located; and all facilities shall be located as to conform to other special exception standards.

*In accordance with Section 59-G-2.24(b), the Board finds that the proposed building will be constructed on property that is zoned RE-2. The requested facility will meet the height, coverage, and setback requirements of the RE-2 Zone. The RE-2 height limit is 50 feet. The proposed tennis building will be approximately 37 feet in height. Lot coverage in the RE-2 Zone is 25%; lot coverage for all existing and proposed buildings on site will be approximately 0.008%. In the RE-2 Zone, the setback for an accessory building is 80 feet and the proposed tennis building will be setback 90 feet from River Road.*

(c) All outdoor lighting shall be located, shielded, landscaped or otherwise buffered so that no direct light shall constitute an intrusion into any residential area.

*In accordance with Section 59-G-2.24(c), the Board finds that the applicant has testified that the proposed tennis facility will have a light erected at its entrance for the patrons' safety. Moreover, the applicant has submitted a conceptual landscape plan for the proposed tennis building. M-NCPPC Technical Staff has reviewed the conceptual landscape plan and found it to be acceptable. The applicant must submit a final landscape and lighting plan for approval by Technical Staff, prior to issuance of building permits.*

Therefore, based on the foregoing, the Board **GRANTS** the requested modification to special exception, subject to the following conditions:

1. The applicant is bound by all submitted statements and plans.
2. Landscape and lighting as shown in Exhibit No.16, subject to approval of a final landscape and lighting plan by technical staff prior to issuance of building permits. Should staff recommend any significant modification to the plan, it shall be returned to the Board for review and approval.



3. Approval of a tree save plan by technical staff prior to release of sediment and erosion control permits or building permits, as appropriate.
4. All terms and conditions of the approved special exception remain in full force and effect.

On a motion by Donna L. Barron, seconded by Louise L. Mayer, with Donald H. Spence, Jr., Chairman, and Angelo M. Caputo in agreement, the Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled case.

Board member Mindy Pittell Hurwitz was necessarily absent and did not participate in the Resolution.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 8<sup>th</sup> day of August, 2001.

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Katherine Freeman  
Executive Secretary to the Board

NOTE:

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and any party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four month period within which the special exception granted by the Board must be exercised.

See Section 59-A-3.2 of the Zoning Ordinance regarding Use and Occupancy Permit for a Special Exception.

